

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH JOHN UNCAPHER,

Defendant-Appellant.

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UNPUBLISHED

April 13, 2004

No. 246222

Wayne Circuit Court

LC No. 01-014257-01

Before: Talbot, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree murder, MCL 750.316, in the stabbing death of Robin Howard, and second-degree murder, MCL 750.317, in the stabbing death of Roger Sanford. Defendant was sentenced to concurrent terms of natural life, and twenty-five to fifty years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first claims on appeal that the trial court erred in excluding two types of evidence: 1) testimony regarding a condition that allegedly interfered with his ability to deliberate, and 2) testimony regarding his state of mind as to his relationship with Howard, whom he had dated for several months. We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *People v Jones*, 240 Mich App 704, 706; 613 NW2d 411 (2000); *People v Herndon*, 246 Mich App 371, 406; 633 NW2d 376 (2001). A preserved nonconstitutional error is not grounds for reversal unless it is more probable than not that the error was outcome determinative. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

Defendant sought to admit the following evidence: 1) the results of a spinal tap procedure performed on defendant; 2) the results of a glucose tolerance test performed on defendant; and, 3) expert testimony regarding the effects on the human body of the conditions uncovered by the tests performed on defendant, such as defendant's low serotonin level. According to defense counsel, the evidence was not being offered to negate defendant's intent to kill one of the victims, but to show that defendant was unable "[t]o rationally think through decisions." It appears that the trial judge viewed defendant's proffered evidence as the basis of a "diminished capacity" defense, and denied defendant's motion in reliance on *People v Carpenter*, 464 Mich 223, 226; 627 NW2d 276 (2001), where our Supreme Court interpreted MCL 768.21a, which addresses which persons are deemed legally insane. Defendant denied that he was claiming diminished capacity and argued that he was not trying to negate specific intent;

rather, he was admitting he had the ability to form intent, but alleging that he was incapable of premeditation or deliberation. Defendant argued that the proffered evidence would show a biological, physical problem, rather than a psychological problem as anticipated in *Carpenter*, *id.*

The core of our Supreme Court's decision in *Carpenter* involved the admissibility of evidence regarding the defendant's mental capacity. Although defendant here tried to distinguish between a "psychological" and a "biological" conditions affecting the brain, we note that, in *Carpenter*, the defendant wanted to reduce his criminal culpability by showing that he suffered from organic brain damage. *Id.*, 464 Mich 228. Similarly, defendant here sought to reduce his criminal culpability by showing that he had "biological" problems that diminished his ability to reason and control his impulses.

Defendant also suggests that *Carpenter* does not apply here because specific intent was the element at issue there, while premeditation and deliberation are at issue in this case. However, our Supreme Court relied in part on the United States Supreme Court decision in *Fisher v United States*, 328 US 463; 66 S Ct 1318; 90 L Ed 1382 (1946), where the U.S. Supreme Court upheld the exclusion of evidence, short of insanity, pertaining to "the fact of and the . . . capacity for premeditation and deliberation." *Carpenter*, *supra*, 464 Mich 240, quoting *Fisher*, *supra*, 328 US 470. Our Supreme Court clearly concluded that "the insanity defense as established by the Legislature is the sole standard for determining criminal responsibility" when it is based on either mental illness or retardation. *Carpenter*, *supra*, 464 Mich 228, 239, 241. Quoting *State v Mott*, 187 Ariz 536, 541; 931 P2d 1046 (1997), our Supreme Court noted, "*Fisher* stands for the proposition that state legislatures, without violating the constitution, may preclude defendants from offering evidence of mental and psychological deficiencies to challenge the elements of a crime." *Carpenter*, *supra*, 464 Mich 241.

Here too, no matter how defendant frames it, the defense argument was that defendant should be relieved of criminal responsibility because he was incapable, because of "a biological disorder," of forming a mental element of the crime. As the trial court indicated, the ruling in *Carpenter* precludes admission of such evidence. The trial court did not abuse its discretion in excluding the evidence of defendant's "chemical imbalance." *Jones*, *supra*, 240 Mich App 706.

Defendant also argues that the trial court erred in excluding testimony regarding a telephone conversation the day before the victims were murdered. Defendant's friend testified that defendant called Howard on a cell phone while defendant and the witness were in a vehicle. The witness said he could hear what defendant said during the conversation, and that defendant relayed Howard's part of the conversation to him. The trial court sustained, on the basis of hearsay, the prosecutor's objection to testimony regarding specific statements. However, through later questions, defense counsel effectively obtained the substantive information he claimed he had been seeking previously. The witness testified without objection that Howard told defendant in detail about an apartment she found for her and defendant to rent together. Thus regardless of the merits of defendant's challenge on appeal, defendant was not precluded from presenting the evidence and the trial court's ruling on the phrasing of a single question was clearly not outcome determinative. *Lukity*, *supra*, 460 Mich 495-496.

Defendant also argues that there was insufficient evidence of premeditation and deliberation to convict him of the first-degree murder of Howard. We disagree. This Court reviews the evidence de novo in a light most favorable to the prosecution to determine whether a

rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979); *People v Oliver*, 242 Mich App 92, 94-95; 617 NW2d 721 (2000).

Viewing the evidence in a light most favorable to the prosecution, there was ample evidence here of premeditation and deliberation. Several witnesses testified regarding defendant's prior relationship with Howard, and of defendant's jealousy. Defendant himself testified that, the night before the stabbings, he suspected that Howard was being unfaithful to him and "just drove around for a while thinking." There was evidence that defendant had previously threatened to kill Howard and told her he wished she were dead. Defendant acquired a large hunting knife, which he carried with him in his vehicle. Defendant followed the victims' cars with his vehicle, rammed Howard's car in an effort make her pull over, and waited until she was alone in a parking lot to approach her. There was evidence that Sanford also pulled into the parking lot and put himself between defendant and Howard. Defendant testified that he concealed the knife and took it with him as he confronted the two victims. Defendant said that he stabbed Sanford in the back, prevented Howard from seeking safety in her car, and stabbed her to death. On this evidence, a rational trier of fact could have found that the essential elements of first-degree murder were proven beyond a reasonable doubt. *Hampton, supra*, 407 Mich 368.

Affirmed.

/s/ Michael J. Talbot

/s/ Janet T. Neff

/s/ Pat M. Donofrio